STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1711

State of Minnesota,
Respondent,

vs.

Jerry Guevara, Jr.,
Appellant.

Filed December 24, 2018
Affirmed
Halbrooks, Judge

Washington County District Court
File No. 82-CR-17-619

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges his convictions of third-degree criminal sexual conduct on the ground that the evidence is insufficient to establish the venue element of the offense. We affirm.

FACTS

In 2001, appellant Jerry Guevara, Jr., impregnated 16-year-old N.D., the minor daughter of his long-term girlfriend, J.D. N.D. gave birth to her first child in April 2002 in St. Paul. J.D., Guevara, and N.D. continued living together as a family unit. In March 2003, N.D. gave birth to her second child, also fathered by Guevara. After N.D. turned 18, she and Guevara had seven more children. In 2017, during an unrelated investigation, law enforcement learned about their relationship. Guevara was subsequently charged in Washington County under Minn. Stat. § 609.344, subd. 1(e), (f) (Supp. 2001), with two counts of criminal sexual conduct related to the conception of the second child of N.D. and Guevara. The district court held a bench trial and found Guevara guilty on both counts. The district court sentenced Guevara on count one to 18 months in prison, stayed, and placed Guevara on probation for 15 years. The district court dismissed count two as a lesser-included offense. This appeal follows.

D E C I S I O N

Guevara argues that the evidence is insufficient to support his convictions because the state did not prove the venue element of the offense beyond a reasonable doubt. On appeal, the parties dispute whether the direct or circumstantial standard of review should

apply. We review a conviction based on circumstantial evidence with heightened scrutiny. *State v. Sam*, 859 N.W.2d 825, 833 (Minn. App. 2015). In this case, we need not resolve the dispute because, even under the heightened circumstantial-evidence standard of review, there is sufficient evidence to support Guevara's convictions. *See State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013).

On review of a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict and assume that the fact-finder believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). To determine if the circumstantial evidence is consistent with Guevara's guilt, we undertake a two-step analysis. *Silvernail*, 831 N.W.2d at 598.

First, we identify the circumstances proved, "giving due deference to the fact-finder and construing the evidence in the light most favorable to the verdict." *Sam*, 859 N.W.2d at 833. Second, we independently determine the reasonableness of the inferences a fact-finder could draw from the circumstances proved. *Silvernail*, 831 N.W.2d at 599. We do not look at the circumstances proved as isolated facts, but rather as a "complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude . . . any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). All circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010).

Under Minn. Stat. § 627.15 (2018), a criminal charge arising from an incident of child abuse "may be prosecuted either in the county where the alleged abuse occurred or

the county where the child is found." We apply Minn. Stat. § 627.15 to instances of sexual abuse. *State v. Larson*, 520 N.W.2d 456, 461 (Minn. App. 1994), *review denied* (Minn. Oct. 14, 1994). In *State v. Rucker*, we held that a child is "found" for the purposes of establishing venue in "the county where the child resided either when the abuse occurred or when the abuse was discovered." 752. N.W.2d 538, 547 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008). N.D. and Guevara resided in Stearns County when the abuse was discovered. Guevara was charged in Washington County based on the state's belief that N.D. was living in Washington County at the time of the abuse. Guevara contends that the evidence does not prove beyond a reasonable doubt that N.D. was residing in Washington County when the abuse occurred.

When taken in the light most favorable to the verdict, the circumstances proved are as follows. N.D. gave birth to her first child at a hospital in St. Paul on April 11, 2002. On the hospital intake and discharge paperwork, N.D. listed her home address as Guevara's parents' home in Woodbury, in Washington County. Conception of N.D.'s second child occurred between June 4 and June 10, 2002.

J.D. testified that the family was often transient and lived "a thousand different places." But she stated that, whenever the family was homeless, they lived with Guevara's parents in Woodbury for periods of time that were at least a month in duration. According to J.D., the family was "more than likely" living in Woodbury in May 2002, and was "probably" living in Woodbury in June 2002. She also testified that the family lived in Woodbury before moving to Ellsworth, Wisconsin. Court records from Wisconsin establish that J.D., N.D., and Guevara moved to Ellsworth in the beginning of July 2002.

Next, we determine whether these circumstances are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Sam*, 859 N.W.2d at 834. We do not view the circumstances in isolation, but rather as a complete chain. *Al-Naseer*, 788 N.W.2d at 473. While J.D.'s testimony was contradictory at times, she consistently testified that the family lived in Woodbury in spring and early summer of 2002. This is supported by the hospital records. J.D. also testified that they lived in Woodbury before moving to Ellsworth. This is consistent with court records that show that the family moved to Ellsworth in the beginning of July 2002. When viewed as a complete chain, the circumstances proved by both J.D.'s testimony and the documentary evidence support a rational inference that J.D., N.D., and Guevara were living in Woodbury in spring 2002, and remained there until they moved to Ellsworth in July. This inference is consistent with guilt because it means that N.D. was residing in Woodbury when the abuse occurred.

But Guevara argues that there is a rational hypothesis that the family was residing in Rochester at the time that N.D.'s second child was conceived. He bases this assertion on J.D.'s testimony that the family may have lived in Rochester at some time during the summer of 2002. During her testimony, J.D. stated that she was "getting confused" when trying to provide a timeline of the family's residences. She testified that the family may have moved to Rochester at some point but was unable to provide specific details. She stated that, after the family left Woodbury, they either moved to Rochester or Ellsworth. But the district court did not credit J.D.'s testimony that the family may have lived in Rochester before moving to Ellsworth in July. The district court found that "[t]here is no

believable evidence to contradict" that the family lived in Woodbury, "until the family moved to Ellsworth in July of 2002."

Because the circumstances proved are consistent with Guevara's guilt and inconsistent with any rational hypothesis except that of guilt, we conclude that the evidence is sufficient to sustain Guevara's convictions.

Affirmed.